

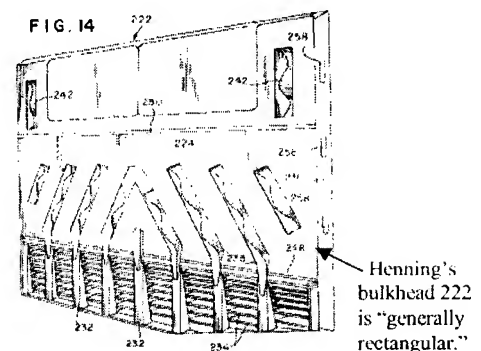
REMARKS

No claims have been amended. Accordingly, claims 21-26 remain pending in this application.

Claims 21-22

Independent claim 21 was rejected under 35 U.S.C. § 103(a) as being unpatentable over Henning (U.S. Patent No. 5,947,812). Applicants respectfully submit that the Office Action has failed to set forth a *prima facie* case of obviousness as required by MPEP § 2143. In particular, Henning fails to disclose a number of claim elements, and the Office Action's unsupported statement that the missing elements would be "within the level of ordinary skill in the art" is insufficient to satisfy the Examiner's burden set forth in MPEP § 2143.03 and § 2143.01.

First, unlike claim 21, Henning fails to disclose or suggest "a lower panel portion that is wider than an upper panel portion such that the width of the plenum is greater proximal to the lower panel portion than the width of the plenum proximal to the upper panel portion." Rather, Henning describes a bulkhead having a "rectangular" panel. (See Henning at col. 1, line 65 ("rectangular panel"); col. 3, lines 38-39 ("generally rectangular configuration"); at col. 4, line 39 ("rectangular panel").) One example of Henning's rectangular configuration is shown in FIG. 14 at right.



The Office Action contends that Henning could be modified to have the claimed configuration because "such a modification would have involved a mere change in the size/shape of the component which is generally recognized as being within the level of ordinary skill in the art." (See Office Action at page 3.) This hand-waving assertion is not enough. According to the MPEP, such reasoning is insufficient to establish a *prima facie* case of obviousness under 35 U.S.C. § 103. See MPEP § 2143.01(IV) ("A statement that modifications of the prior art to meet the claimed invention would have been 'well within the ordinary skill of the art at the time the claimed invention was made' . . . **is not sufficient** to establish a *prima facie* case of obviousness." (emphasis added)). Simply put, Henning does not teach all the claim elements, and the Office Action's conclusory statement is inadequate to fill in the blanks.

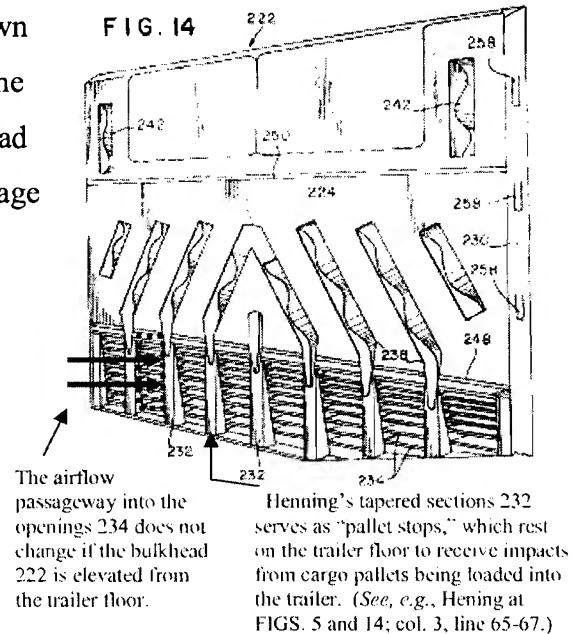
The only attempt to support the conclusory statement in the Office Action was “the applicant has not disclosed that having a bulkhead of this particular shape solves any stated problem or is for any particular purpose that is unobvious to one having ordinary skill in the art.” (See Office Action at page 3.) This statement erroneously attempts to place the Examiner’s initial burden on the Applicants. The Applicants do not bear an initial burden of explaining why the claimed invention is superior to the prior art. *In re Slocombe*, 510 F.2d 1398 (CCPA 1975) (“There is no requirement that superiority over prior art be disclosed in the application.”). Rather, it is the Examiner that bears the initial burden of showing that “the prior art [] suggests the desirability of the combination.” MPEP § 2143.01(III); *see also* MPEP § 706.02(j) (“The initial burden is on the examiner . . .”). This burden was clearly not met. Henning fails to teach the claimed wider lower panel portion, and the Office Action points to nothing in the prior art to suggest the desirability of modifying Henning’s panel (as required by MPEP §§ 2143.01(III)).

Nevertheless, Applicants respectfully traverse the Office Action’s contention that “the applicant has not disclosed that having a bulkhead of this particular shape solves any stated problem or is for any particular purpose.” Applicants’ original specification expressly and inherently provides such a teaching. For example, the lower panel portion being wider than the upper panel portion can increase the amount of return airflow pathways near the trailer floor (page 6, lines 20-28) while funneling or otherwise guiding the return airflow to an inlet of a temperature control unit (page 5, lines 6-10). In addition, the claimed configuration can reduce the overall weight of the bulkhead (e.g., the upper panel portion may comprise less material), which may be useful in circumstances when the bulkhead is to be elevated above the trailer floor (unlike Henning’s bulkhead that rests on the floor so that tapered sections 232 serve as pallet stops).

In short, Henning does not disclose the claimed wider lower panel portion, and the Office Action has failed to set forth a *prima facie* case of obviousness under 35 U.S.C. § 103.

Second, unlike claim 21, Henning fails to disclose or suggest “means for releasably securing . . . such that the bulkhead is secured to the wall in an elevated position above a floor of the trailer.” The Office Action concedes that Henning fails to disclose this element, but instead contends that Henning’s bulkhead 222 is “capable of securing” in an elevated position and one would be motivated to do so because “a larger airflow is [] provided.” This “larger airflow”

reasoning is mistaken. Contrary to the Office Action's contention, the cross-sectional area of the air openings 234 into Henning's bulkhead 222 does not change if the bulkhead 222 is elevated above the floor. As shown in Henning's FIG. 14 (shown at right), the air openings 234 are defined in between the pallet stops 232—not on the bottom face of the bulkhead 222. Thus, the cross-sectional area of the airflow passage would not increase if Henning's bulkhead 222 were elevated above the floor. As previously described, the Office Action must show that "the prior art [] suggests the desirability of the combination." MPEP § 2143.01(III); *see also* MPEP § 706.02(j). Again, this burden was not met here. Henning does not disclose the claimed means for releasably securing, and the Office Action has failed to set forth a *prima facie* case of obviousness under 35 U.S.C. § 103.



Applicants request withdrawal of the rejection under 35 U.S.C. § 103. Prompt allowance of claims 21-22 is requested.

Claim 23

Independent claim 23 was rejected under 35 U.S.C. § 103(a) as being unpatentable over Henning in view of Manfred (EP 1099598A2). Applicants respectfully submit that the Office Action has failed to set forth a *prima facie* case of obviousness as required by MPEP § 2143. In particular, neither Henning, Manfred, nor any combination thereof would disclose all elements described in claim 23 as required by MPEP § 2143.03. In addition, the Office Action provides no explanation of why the prior art suggests the desirability of the proposed combination, thereby failing to satisfy the burden under MPEP § 2143.01(III) and MPEP § 706.02(j).

First, as previously described in connection with claim 21, Henning fails to disclose or suggest "means for releasably securing . . . such that the bulkhead is secured to the wall in an elevated position above a floor of the trailer." Manfred is also lacking a disclosure of this

element or a suggestion to modify Henning's bulkhead. For this reason alone, Applicants request withdrawal of the rejection under 35 U.S.C. § 103.

Second, the Office Action concedes Henning fails to describe the claimed hook members as described in claim 23. The Manfred reference is also lacking. Unlike claim 23, Manfred fails to describe hook members that "extend in an angularly upward direction *from the trailer wall*." Instead, Manfred teaches that neighboring panels (5) are fitted with downwardly extending hooks 3 and 4 that rest on horizontal crossbars (6, 7) fitted between the side walls of a cargo container. (See Manfred, Abstract and FIGS. 1, 2a, and 2c.) Thus, the proposed combination of Henning's bulkhead 222 with Manfred's hooks 3 and 4 would result in a bulkhead 222 that is mounted to horizontal crossbars extending between the trailer sidewalls. Moreover, unlike claim 23, Manfred's hooks 3 and 4 do not engage the crossbars so that a portion of the panel "*is increasing compelled toward the trailer wall as hook members engage the panel*." The Office Action provided no explanation as to how Manfred's hooks 3 and 4 would compel the panels 5 toward a trailer wall—in particular, the wall that is used to at least partially define a plenum (as described in claim 23). This is because Manfred's hooks 3 and 4 merely rest on the crossbars 6 and 7. In short, no combination of Henning's bulkhead 22 and Manfred's hooks 3 and 4 would result in the claim elements set forth in claim 23.

The Office Action erroneously brushed aside these claim elements that are not disclosed by Manfred by stating that "it has been held that a mere reversal of the essential working parts of a device involves only routine skill in the art." (See Office Action at page 4.) Again, unsupported conclusory assertions are inadequate to fulfill the Examiner's initial burden under MPEP § 2143. First, if a rule "has been held" to operate against the Applicants here, the Office Action should in the very least provide an authoritative citation in support of this rule and an explanation of how the authoritative citation applies to this case. No such citation was provided. Second, the subject matter described in claim 23 is not a "mere reversal of the essential working parts." As previously described, Manfred's hooks are attached to the panels 5 (not the trailer

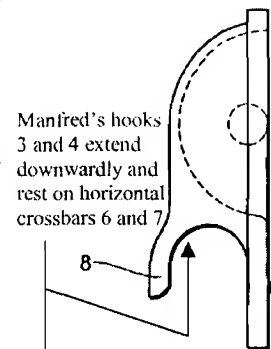


Fig. 2c

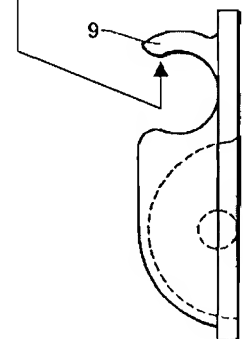


Fig. 2a

wall) and extend downwardly to rest on the horizontal crossbars (e.g., no teaching or suggestions that the hooks compel the panels 5 toward the trailer wall). Applicants respectfully request examination of all claim elements set forth in independent claim 23.

Applicants submit that the rejection under 35 U.S.C. § 103 was improper. Prompt allowance of claims 23 is requested.

Claims 24-25

Independent claim 24 was rejected under 35 U.S.C. § 103(a) as being unpatentable over Henning. Applicants respectfully submit that the Office Action has failed to set forth a *prima facie* case of obviousness, and that claim 24 describes patentable subject matter.

First, unlike claim 24, Henning fails to disclose “a lower panel portion that is wider than an upper panel portion such that the width of the plenum is greater proximal to the lower panel portion than the width of the plenum proximal to the upper panel portion.” As previously described in connection with claim 21, the Office Action’s unsupported reliance on modifications “being within the level of ordinary skill in the art” is inadequate to satisfy the examiner’s initial burden. *See* MPEP § 2143.01(IV). For this reason alone, the Office Action has failed to set forth a *prima facie* case of obviousness, and the rejection of claims 24-25 under 35 U.S.C. § 103 should be withdrawn.

Second, unlike claim 24, Henning fails to disclose “a plurality of mounting members to releasably secure the peripheral portion in abutment with the wall such that the bulkhead is secured to the wall in an elevated position above floor of the trailer.” As previously described in connection with claim 21, the Office Action’s “larger airflow” motivation is mistaken, and thus the Office Action failed to satisfy the initial burden of showing that “the prior art [] suggests the desirability of the combination.” MPEP § 2143.01(III); *see also* MPEP § 706.02(j). Again, the Office Action has failed to set forth a *prima facie* case of obviousness. Applicants request withdrawal of the 35 U.S.C. § 103 rejection. Prompt allowance of claims 24-25 is requested.

Claim 26

Independent claim 26 was rejected under 35 U.S.C. § 103(a) as being unpatentable over Henning in view of Manfred. Applicants respectfully submit that the Office Action has failed to

set forth a *prima facie* case of obviousness under 35 U.S.C. § 103, and that claim 26 describes patentable subject matter.

First, as previously described in connection with claim 24, Henning fails to disclose or suggest “a plurality of mounting members to releasably secure the peripheral portion in abutment with the wall such that the bulkhead is secured to the wall in an elevated position above floor of the trailer.” Manfred is also lacking a disclosure of this element or a suggestion to modify Henning’s bulkhead. For this reason alone, the Office Action failed to set forth a *prima facie* case of obviousness, and Applicants request withdrawal of the rejection of claim 26 under 35 U.S.C. § 103.

Second, unlike claim 26, Manfred fails to describe hook members that “extend in an angularly upward direction from the trailer wall.” Also, Manfred’s hooks 3 and 4 do not engage the crossbars so that a portion of the panel “is increasing compelled toward the trailer wall as hook members engage the panel.” Similar to the previous discussion in connection with claim 23, the Office Action’s unsupported assertions (e.g., “it has been held that . . .”) are inadequate to fulfill the Examiner’s initial burden under MPEP § 2143. The subject matter described in claim 26 is not a “mere reversal of the essential working parts.” As previously described, Manfred’s hooks 3 and 4 are attached to the panels 5 (not the trailer wall) and extend downwardly to rest on the horizontal crossbars 6 and 7 (e.g., no teaching or suggestions that the hooks compel the panels 5 toward the trailer wall). Again, the Office Action failed to set forth a *prima facie* case of obviousness, and Applicants respectfully request examination of all claim elements set forth in independent claim 26.

Conclusion

Nothing in this paper should be construed as an intent to concede any issue with regard to any claim, except as specifically stated in this paper. Applicants hereby specifically reserve the right to prosecute claims of different or broader scope in a continuation application.

Applicant : Chad Nelson et al.
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Filed : March 25, 2004
Page : 8 of 8

Attorney's Docket No.: 12477-016001

No fee is believed to be due at this time. If necessary, please apply any charges to deposit account 06-1050.

Respectfully submitted,

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